

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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PAULETTE LASTER, individually and as  
the personal representative of the Estate of  
MYLES ELLIOT LASTER,

*Plaintiff,*

v.

**Case No.: 23-CV-1030**

CITY OF MILWAUKEE, BRANDON A. GATSON,  
and TIMEKA R. PARKER,

*Defendants.*

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**PLAINTIFF'S REPLY TO DEFENDANTS' BRIEF IN OPPOSITION TO  
PLAINTIFF'S MOTION TO COMPEL DISCOVERY**

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COMES NOW the Plaintiff, Paulette Laster, individually and as the personal representative of the Estate of Myles Elliot Laster, and respectfully submits this reply to this Honorable Court in support of her motion to compel the Defendant, City of Milwaukee, to fully comply with its discovery obligations, including the production of the Standard Operating Instructions (SOI) utilized by the Telecommunications Division of the Milwaukee Police Department (MPD).

## ARGUMENT

Under Federal Rule of Civil Procedure 26(b)(1), discovery includes any matter relevant to a party's claim or defense and proportional to the case's needs. The Standard Operating Instructions (SOI) used by the Telecommunications Division of the Milwaukee Police Department (MPD) fit this scope, relating directly to the Plaintiff's claims of negligence and procedural failures.

Defendants argue that the SOI are irrelevant, disproportional, and cumulative, while the Plaintiff disagrees, citing deposition testimonies that establish the significance of the SOI in the operations of the MPD during emergency 911 calls. The SOI details the duties and responsibilities of telecommunicators and dispatchers, essential for understanding whether the City's employees met the expected standards of care during the incident. Unlike the general Standard Operating Procedures (SOP), the SOI provides specific guidelines for the Telecommunications Division, making them crucial for assessing dispatcher conduct.

When producing documents, the responding party cannot attempt to hide a needle in a haystack by mingling responsive documents with large numbers of nonresponsive documents. (*Hagemeyer N. Am. v. Gateway Data Scis. Corp.*, 222 F.R.D. 594 (E.D. Wis. 2004)). Rule 26(b)(1) permits discovery of relevant, non-privileged matters that can lead to admissible evidence (*Tuszkiewicz v. Allen-Bradley Co., Inc.*, 172 F.R.D. 393 (E.D. Wis. 1997)). Evidence is relevant if it pertains to the subject matter of litigation (*Fairfield v. Waukesha County*, No. 23-CV-873-JPS (E.D. Wis. Apr. 16, 2024)). District courts have broad discretion in discovery matters, considering factors like relevance, need, breadth, time period, specificity, and burden (*Eclipse Serv. v. SolarCode LLC*, No. 22-CV-757-JPS (E.D. Wis. Jan. 4, 2023)). Rule 26(b)(1)

also supports discovering information relevant to a claim or defense (*Appleton Papers, Inc. v. Env'tl. Prot. Agency*, 702 F.3d 1018 (7th Cir. 2012)).

The Plaintiff's request for the SOI is specific, relevant, and necessary to establish whether MPD's telecommunicators and dispatchers followed proper procedures and standards. The SOI are critical to evaluating the standard of care and whether it was met.

In Wisconsin, a negligence claim requires proving a duty of care, a breach of that duty, causation, and damages (*Lees v. Carthage Coll.*, 714 F.3d 516 (7th Cir. 2013); *Balistreri v. Richard E. Jacobs Group, Inc.*, 322 F. Supp. 2d 972 (E.D. Wis. 2004)). The SOI are essential in establishing the duty of care by outlining specific instructions and protocols for telecommunicators and dispatchers, relevant to handling emergency calls. Testimonies from Captain Annemarie Domurat and Nicholas Malcom highlight the SOI's importance in MPD's daily operations, indicating their relevance to the Plaintiff's negligence claims. (Malcom 22:2-22:18; 34:22-37:1, Attached hereto as Exh. A.), (Domurat 9:5-10:4, Attached hereto as Exh. B.).

Wisconsin law imposes a duty to avoid actions that unreasonably threaten others' safety (*Burton v. Am. Cyanamid Co.*, 441 F. Supp. 3d 705 (E.D. Wis. 2020)). The Plaintiff argues that the SOI are vital for identifying protocol deviations contributing to the delayed response to Mr. Laster's 911 calls. The SOI, therefore, are not irrelevant or cumulative; they offer specific insights that the SOP cannot.

Defendants' immunity argument under Wis. Stat. § 893.80(4) is challenged by exceptions to statutory immunity, particularly for ministerial acts, duties to address a known danger, actions involving professional discretion, and willful misconduct (*Estate of Williams v. City of Milwaukee*, 274 F. Supp. 3d 860 (E.D. Wis. 2017); *Estate of Fiebrink v. Armor Corr. Health*

*Servs., Inc.*, No. 18-CV-832-JPS (E.D. Wis. May 3, 2019)). The SOI may establish ministerial duties, making dispatchers' actions potentially outside discretionary immunity if they failed to follow mandated procedures.

The SOI are not cumulative but uniquely relevant and necessary for understanding the standard of care and procedural failures. They provide specific information not covered by other documents, essential for fair adjudication.

Furthermore, the cited case from the Defendant's reply, *Hoskins v. Dodge Cnty.*, does not support the Defendant's position as it pertains to general discretionary acts rather than the specific and detailed instructions contained in the SOI. In *Hoskins*, the court held that a 911 call describing a possibly sinking boat was insufficient to describe a known and present danger. However, the circumstances surrounding Mr. Laster's calls present a different context that warrants a closer examination of the dispatcher's adherence to the SOI.

Plaintiff has proposed reasonable measures to address concerns about sensitive SOI information, such as marking them "Attorney Eyes Only" or entering into a Protective Order with redactions. This approach aligns with standard civil litigation practices for handling sensitive discovery information (*Jeffery v. Sobek*, 22-cv-123-pp (E.D. Wis. Aug. 22, 2023); Federal Rule of Civil Procedure 26(c)).

**A. Plaintiff seeks an award of attorney's fees and costs incurred in bringing the motion and this reply**

Plaintiff seeks an award of attorney's fees and costs incurred in bringing the motion and this reply. The Defendants' obstruction has not only delayed the discovery process but has also necessitated additional legal expenses. The SOI are critical to the Plaintiff's case, providing essential information for establishing the standard of care and potential breaches. Therefore, the

Plaintiff respectfully reiterates her request for attorney's fees and costs incurred in bringing this motion, as provided by Federal Rule of Civil Procedure 37(a)(5). Awarding these fees and costs is both justified and necessary to ensure a fair and efficient resolution of this matter.

### **CONCLUSION**

For the ongoing reasons, Plaintiff respectfully petitions this Honorable Court to (1) compel the Defendant to comply with the Plaintiff's Motion to Compel and produce the Standard Operating Instructions and (2) grant Plaintiff the attorney fees and costs incurred in bringing this action. Such measures are essential to facilitate a just and efficient legal process, promote transparency, and uphold the principles of fairness in this case. Your favorable consideration of this request will significantly contribute to the expeditious and equitable resolution of this matter.

Dated this 15th day of July 2024.

**The LaMarr Firm, PLLC**

By: /s/ B'Ivory LaMarr

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*Attorney for Plaintiff*

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2                   EASTERN DISTRICT OF WISCONSIN

3           PAULETTE LASTER, Etc,

4                   Plaintiff,

5                   -vs-

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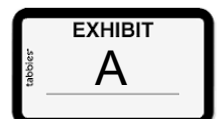
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11           Deposition of NICHOLAS MALCOM, taken before  
12           Brian Kuebler, Notary Public, at 9:00 A.M. on  
13           Monday, May 6, 2024, pursuant to notice and/or  
14           stipulations of counsel, on behalf of the  
15           Plaintiff in this cause.

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1 911 telecommunicator and a dispatcher?

2 A. They would be in the Standard Operating  
3 Instructions.

4 Q. Okay. So just to clarify, that's not the  
5 Standard Operating Procedure of the City of  
6 Milwaukee Police Department, correct?

7 A. Correct. That is correct.

8 Q. All right. So what is a "Standard Operating  
9 Instruction"?

10 A. It gives, like, the instructions for both job  
11 positions, telecommunicator and dispatcher, and  
12 it tells them how to go about basically their  
13 daily duties.

14 Q. Okay. When do they get provided this SOP -- I  
15 mean, I'm sorry, the Standard Operating Procedure  
16 instructions?

17 A. Yeah, SOI is provided to them as new employees in  
18 week one.

19 Q. Okay. So just to be clear, so an individual  
20 applies for 911 telecommunicator with the job  
21 description that we just reviewed, and then it's  
22 only after they've actually taken the job,  
23 they've interviewed, they passed all the  
24 requirements, and that's when there's sort of a  
25 bait and switch where they're now provided a

1 Q. Okay. So prior to 2019, you don't have any  
2 knowledge of any other consultants reviewing any  
3 of the materials that were provided? Correct?

4 A. Correct.

5 MR. LAMARR: All right. At this  
6 time, I want to make an all-record request  
7 for discovery of the SOI that's been  
8 referenced in this deposition.

9 I don't believe that the Plaintiff  
10 has received this SOI that's being  
11 referenced.

12 MR. HOTCHKISS: Attorney LaMarr,  
13 this is Attorney Hotchkiss, I'm  
14 acknowledging that request. Let me work on  
15 it and get you an update, okay?

16 MR. LaMarr: Thank you. And  
17 again, I want the ver -- just to clarify,  
18 I'm looking for the version that would have  
19 been effective as of July of 2020.

20 MR. HOTCHKISS: Okay. Understood.

21 BY MR. LAMARR:

22 Q. Okay. All right. So just going back to the SOI  
23 and the knowledge. Seeing that you are the  
24 representative of the City of Milwaukee Emergency  
25 Communications division there's -- for all we



1 know there could have been any employee in the  
2 emergency communications division that could have  
3 created this SOI; is that fair?

4 A. Any employee?

5 Q. Yeah, any employee.

6 A. No.

7 Q. Okay. So --

8 A. It would --

9 Q. Go ahead.

10 A. It would have to be an employee, I could only say  
11 associated with either Quality Assurance or  
12 Training prior to 2016.

13 Q. "Quality Assurance" or "Training"?

14 A. Yeah. You can't just -- I mean, it has to go  
15 through approvals. You can't just create  
16 something and send it out, it has to be approved  
17 by the division commander.

18 Q. Okay. Can you tell me who in 2020 approved the  
19 SOI that was in place as of July 2020?

20 A. The SOI that was in place in July 2020 was the  
21 one that was approved prior to 2016.

22 Q. Okay.

23 A. So like, there was probably some updates that  
24 were done via memorandum, but it's not a document  
25 that's just like published every year.

1 Q. Okay. And who would've -- who approved it?

2 A. Initially?

3 Q. No, who approved the one that was in place as of  
4 July 2020?

5 A. That would've been whoever was the commander in  
6 2016.

7 Q. Okay. So as you sit here today, you don't know  
8 who that person would be, correct?

9 A. Definitively no.

10 Q. Okay. Is it signed by individual? Is the SOI  
11 actually signed by individual at the bottom of  
12 it?

13 A. No.

14 Q. Okay. All right. And so it's not signed. And  
15 is there an approval process, that you're aware  
16 of, that goes to state that this is an effective  
17 way of managing the emergency communications  
18 division?

19 A. Did you say "to the state"?

20 Q. No. Is there any approval process or is it just  
21 the individual that creates it and then makes it  
22 the policy or the instruction?

23 A. It's approved by the commander of the division.  
24 Some of them go to the, like the chief's office,  
25 but in -- I don't know who approved it in 2016,

1 no, I do not.

2 Q. Okay. So essentially as of that date,  
3 individuals were operating off of a policy that  
4 they don't know who approved it, correct?

5 A. I wouldn't say that, no. If it was disseminated,  
6 it was at least approved by the commander of the  
7 division.

8 Q. Okay. But you don't know who that individual  
9 was, correct?

10 A. Correct.

11 Q. Was there any disciplinary procedure for not  
12 following the SOI?

13 A. Yes.

14 Q. Okay. And what was that disciplinary process?

15 A. I mean, this is a -- discipline is outside of my  
16 scope, but if you're in violation of something in  
17 SOI, it is disciplinary, yes.

18 Q. Okay. And who issued that discipline? Who was  
19 the person responsible for issuing the  
20 discipline?

21 A. Disciplines are issued by the Internal Affairs  
22 Division.

23 Q. Internal Affairs. So the Internal Affairs are  
24 disciplining individuals for not following a  
25 policy that's not even signed?

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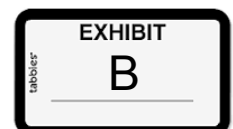
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1 A. In February of this year, we set up a new CAD  
2 system and that meant that we had to update the  
3 SOI to indicate how priorities and things like  
4 that had changed.

5 Q. Okay. And just so I could understand the  
6 Standard Operating Instruction, is that something  
7 that is kind of created internally for that  
8 office to kind of function?

9 A. Yes, that is correct.

10 Q. Okay. So it's not like a Standard Operating  
11 Procedure that is publicized, something that, you  
12 know, that is kind of voted on and amended and  
13 memorandums go out in response to, this is  
14 something that's kind of like an internal way of  
15 doing things within that office; is that fair?

16 A. That is fair. The difference between a Standard  
17 Operating Procedure and SOI is that an SOI only  
18 applies to one unit, whereas, you know, at MPD if  
19 we have a Standard Operating Procedure that  
20 applies to everyone.

21 Q. Okay. All right. And you would agree that the  
22 telecommunications division, it's a team effort  
23 set up to accomplish one goal, correct?

24 A. Correct.

25 Q. And that goal would be specifically to manage the

1 response of 911 calls, correct?

2 A. To clarify, do you mean manage response as far as  
3 enter them and dispatch them?

4 Q. Yes.

5 A. Then yes.

6 Q. Okay. Now as it relates to -- well, let me ask  
7 you this: Do you have any specific knowledge of  
8 the incident involving the Plaintiff in this  
9 case, Myles Laster, the Estate of?

10 A. I'm aware that he was a victim of a homicide.

11 Q. Okay. Do you know anything as far as how the  
12 Telecommunications Division responded to that  
13 incident?

14 A. I have listened to the calls.

15 Q. Okay. Beyond listening to the calls, did you  
16 review any of the CADs in that, in this --

17 A. I did not.

18 Q. Okay. All right. And generally, you would agree  
19 that when a -- after someone takes the call at  
20 the TCD, that it should be dispatched promptly,  
21 correct?

22 A. Depends on the priority.

23 Q. Okay. If it's a Priority 1, 2, or 3, you would  
24 agree that those should be dispatched promptly,  
25 right?